

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)	
)	
Applications for Consent to the)	
Transfer of Control of Licenses)	
)	
Comcast Corporation and)	
AT&T Corporation,)	MB Docket No. 02-70
Transferors,)	
)	
To)	
)	
AT&T Comcast Corporation,)	
Transferee)	
_____)	

**RCN Telecom Services, Inc.,
Written *Ex Parte* and Accompanying Declaration**

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In this proceeding, RCN and other competitive providers have raised concerns regarding predatory pricing practices by the applicants, whereby highly aggressive discounts are offered only to those subscribers to whom competitive service is available.¹ This practice by the applicants also has been raised as a concern in certain local franchise transfer proceedings associated with their proposed merger. In both this proceeding and proceedings at the local level, applicant Comcast has asserted that it does not engage in the practice complained of.

The Commission, in the Document and Information Request attached to the June 11, 2002, letter to the applicants, posed the following questions:

- D.3 Has either Applicant ever included geographic or customer-specific restrictions in marketing/sales promotions with respect to any of its cable franchises? If so, please provide a list of all instances where such promotions occurred. With respect to each such instance, please identify, state or describe: (1) the particular cable franchise where such promotion occurred; (2) the starting and ending dates of such promotion; (3) the nature of the promotion, including its geographic and/or customer-specific restrictions; (4) an explanation or rationale for the promotion; and (5) whether any other competing terrestrial MVPD was providing or had an announced intention to provide service in the area targeted for the promotion.

¹ See Petition of RCN Telecom Services, Inc., to Deny Applications or Condition Consent, dated April 29, 2002, in MB Docket No. 02-70; Reply Comments of RCN Telecom Services, Inc., dated May 21, 2002, in MB Docket No. 02-70, citing Comments of Everest Midwest Licensee, LLC, DBA Everest Connections, dated April 29, 2002, in MB Docket No. 02-70, at 3; Comments of the Broadband Service Providers Association, dated May 21, 2002, in MB Docket No. 02-70, at 10-11.

Comcast, in its written responses submitted on July 2, 2002, responded: “Comcast does not believe that any of its marketing/sales promotions have geographic or customer-specific restrictions of the sort contemplated by the question.”

Comcast asserted, similarly, in a recent local transfer proceeding that its rates are uniform throughout its franchise area, as required by law.² In the course of the recent public hearings in Montgomery County, Maryland, on the proposed transfer to AT&T-Comcast of incumbent Comcast’s cable franchise, Starpower Communications, LLC, a competitive cable overbuilder that is an RCN joint venture, raised the issue of Comcast’s anti-competitive, targeted promotions, whereby Starpower’s customers and potential customers are offered deep discounts not offered by Comcast to other Montgomery County residents. At the public hearing on July 30, 2002, Deborah M. Royster, General Counsel to Starpower, testified regarding this problem, and indicated that the issue has been raised with the County repeatedly. In response to questions by members of the Council, the County Executive’s staff indicated that it had been unable in the past to follow up on Starpower’s complaints regarding discriminatory pricing by Comcast because Comcast has insisted that its promotions are offered countywide. Jane Lawton, the County’s Cable Communications Administrator, testified that, when complaints regarding targeted promotions have been received, “we have followed up, we have given it to Comcast – faxed it over, and said ‘is this countywide,’ and they have told us it is countywide.” Jerry Pasternak, Special Assistant to the County Executive, testified that the material submitted by Comcast in response to requests by the County for information regarding Comcast’s promotions

² Section 8A-15(a) of the Montgomery County Code requires that a franchisee have a uniform cable rate structure throughout its franchise area, with exceptions only for discounts for the elderly and handicapped.

“clearly states that all promotions are offered countywide.” Comcast’s counsel asserted at the same hearing that “I do want to confirm that every promotion has been offered countywide.”

Information received by RCN and Starpower regarding targeted deep discounts by the applicants typically comes from individual customers who have received such offers and, accordingly, the information is anecdotal and extremely difficult to document. However, the information provided in the attached declaration of Ron Maier, a former Comcast employee now employed by Starpower, provides specific information regarding Comcast’s targeted promotional campaigns, which information rebuts Comcast’s assertions on the public record regarding its geographic and/or customer-specific promotions. As the declaration states, Comcast in at least two instances in Montgomery County, Maryland, aggressively marketed generous special discounts or promotions to customers and potential customers in Starpower’s service area that were not publicized or made available to customers outside Starpower’s service area, unless a customer somehow learned of the offer and contacted Comcast to request it.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply Comments of RCN Telecom Services, Inc., were served on August 14, 2002, on the following parties, via e-mail, as indicated below:

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